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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,850	09/22/2006	Philippe Moser	C 2939 PCT/US	4436
23657	7590	04/28/2010		
FOX ROTHSCCHILD LLP 997 Lenox Drive, Bldg. #3 Lawrenceville, NJ 08648				
EXAMINER				
WINSTON, RANDALL O				
ART UNIT		PAPER NUMBER		
1655				
NOTIFICATION DATE		DELIVERY MODE		
04/28/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocket@foxrothschild.com

# Office Action Summary

**Application No.**

10/593,850

**Applicant(s)**

MOSER ET AL.

**Examiner**

Randall Winston

**Art Unit**

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-10,12-15 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-10,12-15,17-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Acknowledgment is made of receipt and entry of the amendment filed on 01/28/2010.

This action is made non-final due to a new ground of rejection.

Applicant's arguments/amendment have overcome examiner's 35 U.S.C. 112, first paragraph rejection, 35 U.S.C. 102(e) and 103(a) rejections, in his non-final office action of 07/31/2010.

Claims 1, 3-10, 12-15 and 17-21 have been examined on the merits.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10, 12, 13 and 17 are rejected under 35 USC 102(b) as being anticipated by Burkill (The useful plant of west tropical Africa (name: *Buchholzia coriacea*), vol 1, 1985)

Applicant claims a method for the treatment of the skin (i.e. a skin disorder such as skin inflammation) comprising the steps of administering to a patient in need thereof a composition comprising an effective amount of the plant extract from the fruit and/or seed of *Buchholzia coriacea*.

Burkill anticipates the claimed invention because Burkill teaches the claimed method for the treatment of the skin-eruptions (i.e. a skin eruption is well known to be

synonymous with skin inflammation) comprising the steps of administering to a patient in need thereof a composition comprising an effective amount of the plant extract (i.e. Burkill discloses that the its *Buchholzia coriacea* is a plant extract because the claimed plant is either grounded and/or boiled in hot water) from the fruit and/or seed (i.e. the claimed seed is well known to come from the claimed fruit) of *Buchholzia coriacea* (see, entire article especially page 2 whereas Burkill discloses that in Liberia the seeds are used on (i.e. on means topically) skin-eruptions).

Therefore, the reference is deemed to anticipate the claimed invention.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-10, 12-15 and 17-21 are rejected under 35 USC 103(a) as being unpatentable over Burkill (The useful plant of west tropical Africa (name: *Buchholzia coriacea*), vol 1, 1985) in view of Horino et al. (JP 200159632 A, see entire article) and Doi et al. (JP 411322630A, see entire article).

Applicant claims a composition and/or method comprising an extract of the fruit and/or seed of *Buchholzia coriacea* and other claimed active ingredients therein (i.e. an additional additive and/or auxiliary) to be administered (i.e. orally or topically in claimed

forms) in effective amounts to a patient in need thereof for the treatment of skin disorders (i.e. a skin disorder such as skin inflammation).

Burkill teaches the claimed composition and/or method for the treatment of the skin-eruptions (i.e. a skin eruption is well known to be synonymous with skin inflammation) comprising the steps of administering to a patient in need thereof a composition comprising an effective amount of the plant extract (i.e. Burkill discloses that the its *Buchholzia coriacea* is a plant extract because the claimed plant is either grounded and/or boiled in hot water) from the fruit and/or seed (i.e. the claimed seed is well known to come from the claimed fruit) of *Buchholzia coriacea* to topically treat skin-eruptions (see, entire article especially page 2 whereas Burkill discloses that in Liberia the seeds are used on (i.e. on means topically) skin-eruptions). Burkill, however, does not teach within its composition and/or method the other claimed active ingredients therein (i.e. an additional additive and/or auxiliary such as an antimicrobial agent) to be administered in effective amounts to a patient in need thereof for the treatment of skin eruptions.

Horino beneficially teaches that antimicrobial agents are useful within compositions for the treatment of skin eruptions (see, e.g. entire article).

Doi also beneficially teaches that antimicrobial agents are useful within compositions for the treatment of skin eruptions (see, e.g. entire article).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Burkill's composition and/or method to include other and/or an additional active ingredient such as an antimicrobial agent as taught by

Horino and/or Doi because the above combined cited references as a whole would create the claimed composition and/or method comprising an extract of the fruit and/or seed of *Buchholzia coriacea* and other claimed active ingredients therein (i.e. an additional additive such as an antimicrobial agent) to be administered (i.e. in the topical claimed form) in effective amounts to a patient in need thereof for the treatment of skin-eruptions (i.e. a skin eruption is well known to be synonymous with skin inflammation). Moreover, as discussed in MPEP Section 2114.06, "it is prima facie obvious to combine two or more compositions each of which is taught by the prior art to be useful for the same purpose (e.g. to treat skin eruptions), in order to form a third composition to used for the same purpose". The adjustments of other conventional working conditions (i.e. determining suitable amounts/ranges of each active ingredient within the claimed composition, the substitution of one form for another and the substitution of one form of administration for another), is deemed a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

Accordingly, the invention as a whole is prima facie obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of evidence to the contrary.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Winston whose telephone number is 571-272-0972. The examiner can normally be reached on 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RW

/Christopher R. Tate/  
Primary Examiner, Art Unit 1655